IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3744 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUMANBHAI BUDHBHAI KOLI PATEL

Versus

DISTRICT MAGISTRATE VALSAD

Appearance:

1. Special Civil Application No. 3744 of 2004

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 28-01-2004. By the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about one criminal case registered against the petitioner. The said case is registered as Gunah Register No.583/2003 under the provisions of Bombay Prohibition Act. The detaining authority has also relied on the statements of two witnesses. After being satisfied subjectively, the detaining authority has passed order of detention against the petitioner, which is impugned in this petition.

2) Mr.Dave, learned advocate for the petitioner submitted that there is only a solitary case registered against the petitioner and considering the same, it cannot be said that the petitioner is a habitual offender. It is further submitted that considering the said case, it cannot be said that the petitioner has violated public order and at the most it can be said that law and order is violated by the petitioner. To substantiate his case, Mr.Dave has relied upon the judgement of this Court in SOHANLAL SURAJARAM VISNOI v. STATE OF GUJARAT & ORS. reported in 2004 (2) GLR , 1051, wherein this Court has taken the view that if solitary case is registered under the Prohibition Act and if there is no justifiable subjective satisfaction on objective material, it cannot be said that the detenu is guilty of disturbing public order.

3) Considering the fact that there is only solitary case registered against the petitioner, the point involved in this matter is covered by the aforesaid judgement of this Court. On this ground, this petition is required to be allowed and it is allowed.

4) In view of what is stated above, this petition is allowed. The order of detention dated 28-01-2004 is quashed and set aside. The detenu, Sumanbhai Budhabhai Koli Patel is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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